



Requirements, rules, and refreshers: Compliance and tax update

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Compliance Update

Learning objectives



- ▲ After this presentation, you will have a better understanding of the:
 - Employee Retention Credit Rules
 - Paid Leave Requirements
 - Student loan repayment programs

Employee Retention Credit

Who is Eligible? Organizations that:

- ▲ Were fully or partially suspended from an appropriate governmental authority due to COVID-19, or
- ▲ Had a significant decline in gross receipts from corresponding quarter in 2019
 - Greater than 50% during 2020
 - Greater than 20% in 2021



Employee Retention Credit

What is it?

- ▲ Credit against applicable employment taxes for each calendar quarter
- ▲ Equal to 50% (70% in 2021) of qualified wages per employee: Maximum credit of
 - \$5,000 per eligible employee for 2020
 - \$7,000 per eligible employee per quarter in 2021



Employee Retention Credit

Qualified wages:



Less than 100 employees

All wages paid during shutdown
and during depressed quarters

Effective January 1, 2021:
Less than 500 employees



Greater than 100 employees

Wages paid to an employee who is not
providing services due to the suspension
of the business or a drop in gross receipts

Effective January 1, 2021:
Greater than 500 employees

Employee Retention Credit

- ▲ Which organizations may still benefit from the ERC?
 - Received a PPP Loan
 - Gross receipts have not surpassed 80% in a calendar quarter
 - Any newly hired employees

- ▲ Available through December 31, 2021
 - The Infrastructure Bill would eliminate the ERC as of 9/30/21



Polling question

Has your organization benefited from the ERC?

1. Yes – 2020
2. Yes – 2021
3. Yes – 2020 and 2021
4. No
5. I'm not sure





Maine Earned Leave Act – Effective January 1, 2021

▲ Covered Employer:

- Employ more than 10 employees for more than 120 days

▲ Covered Employees:

- Generally ALL
 - Exemptions for seasonal and collectively bargained

▲ How much leave is “required”?

- Accrue at least one (1) hour for every 40 hours worked
- Accrue up to 40 hours in one year of employment
- Accrual begins at start of employment
- Can require employment for 120 days before taking leave



Maine Earned Leave Act – Effective January 1, 2021

- ▲ What guidelines apply to an employee?
 - May use leave for any reason
 - Must give “reasonable” notice
 - Absent an emergency, illness, or other sudden necessity
 - Paid at “base rate of pay”
- ▲ Penalties for failure to comply = \$1,000 per occurrence



Massachusetts Paid Family and Medical Leave Act

How does the Massachusetts law differ from Maine's law?

- ▲ Contributions effective October 1, 2019
- ▲ Requires contributions by Employer and Employees
 - Up to 0.75% of compensation
 - Family Leave: Employees can pay 100% of contribution (0.13%)
 - Medical Leave (0.62%): Employees can pay 40% of the standard rate, special rule for employers with less than 25 employees
- ▲ Quarterly tax filings to transmit contributions



Massachusetts Paid Family and Medical Leave Act

How does the Massachusetts law differ from Maine's law? (cont'd)

- ▲ Covers paid family leave and paid medical leave separately
- ▲ Benefit payments begin January 1, 2021
- ▲ Duration of leave:
 - **Family leave:** up to 12 weeks
 - **Medical leave:** up to 20 weeks
 - **Combined leave:** up to 26 weeks



Massachusetts Paid Family and Medical Leave Act

How does the Massachusetts law differ from Maine's law? (cont'd)

- ▲ Amount of Family and Medical Leave Benefits
 - 80% of salary up to 50% of state average weekly wage, plus
 - 50% of salary exceeding 50% of state average weekly wage
 - Up to maximum of \$850 per week (indexed annually)
- ▲ Private Plan exemptions



Vermont Earned Leave Law

How does the Vermont law differ from Maine's law?

- ▲ Benefits generally effective January 1, 2017
- ▲ Covers paid family leave and paid medical leave only
- ▲ Eligible employees accrue 1 hour for every 52 hours worked
 - Maximum accrual is 40 hours annually
- ▲ Employer can impose one-year waiting period before leave can be taken
- ▲ Unused benefits may be paid-out, forfeited or carried over at year-end



Granite State Paid Leave Law

How does the New Hampshire law differ from Maine's law?

- ▲ Benefits generally effective January 1, 2023
- ▲ Not mandatory for an employer to offer the benefit
 - Individuals can opt-in if Employer does not
 - Tax credit for employers who opt in
- ▲ Covers paid family leave and paid medical leave only
- ▲ 60% wage replacement
- ▲ Duration of Leave: up to six (6) weeks
- ▲ Unclear on required funding amount for employers
 - Individual who opt-in: No more \$5 per week



CARES Act: Student loan relief

- ▲ CARES Act permits the following tax free benefits:
 - Up to \$5,250 to be tax-free in 2020 only (extended through December 31, 2025)
- ▲ Included as part of Internal Revenue Code Section 127
- ▲ Exclude up to \$5,250 per employee annually
- ▲ Must have a written plan
- ▲ Graduate or undergraduate courses
- ▲ Not required to be job-related

Polling question

Does your organization offer a student loan repayment program?

1. Yes
2. No
3. Not yet, but considering it
4. I'm not sure





Tax Update

Learning objectives



- ▲ Review IRS Compliance Program Initiatives
- ▲ Refresher of 501(r) Regulations & Requirements
- ▲ Discuss Recent News Developments specific to Community Benefit & Suggested Best Practices
- ▲ Discuss Unrelated Business Income with a focus on Hospital specific examples, including gaming activities

Nonprofit Recent Developments



Tax Exempt and Government Entities division released its Compliance Program and Priorities initiatives:

- ▲ Worker Classification
- ▲ Employers issuing both W-2 and 1099 to same individual, same year
- ▲ Compliance with retirement plan participant loan arrangements
- ▲ 990-N filers – checking the \$50,000 gross receipts test
- ▲ Excess Compensation > \$1mil but no excise tax
- ▲ Compensation for medical services has an exclusion
- ▲ Exempt bonds – arbitrage violations & student loan bonds
- ▲ UBI (while not specifically mentioned) is still an area of focus

501(r) Refresher – CHNA & Implementation Strategy

- ▲ CHNA due every 3 years – due by last day of the Hospital's year end
 - BD will be sending out annual reminders
 - Includes, review, approval, posted to website, etc.
 - \$50,000 penalty if all steps not complete by due date
 - Implementation Strategy (also every 3 years) – due 4.5 months after year end
 - Current CHNA & IS should be posted on website, along with the prior set also
 - We generally recommend 2 prior sets, so 3 sets online at all times
 - IRS does check Hospital websites and sends out correspondence if deficiencies identified



501(r) Refresher – Financial Assistance Policy (FAP)

- ▲ Must be made publicly available
 - Online and in paper
 - Available at a minimum in ER & admission areas
 - Conspicuous signage required!
 - Must notify and inform members of the community served in a manner reasonably calculated to reach those who likely would require assistance
 - Church or Supermarket bulletin board
 - Soup kitchen/homeless shelter, etc.



501(r) Refresher – Limitation on Charges

Look Back Method

- ▲ Determines AGB for any emergency or other medically necessary care provided to a FAP-eligible individual by multiplying the hospital facility's gross charges for that care by one or more percentages of gross charges
- ▲ Hospital must include the claims allowed during the 12-month period by:
 - Medicare fee-for-service alone,
 - Medicare fee-for-service and all private health insurers paying claims to the hospital facility, or
 - Medicaid, either alone or in combination with Medicare and all private health insurers.
- ▲ AGB Calculations must be done at least annually when using the look-back method
- ▲ Look Back Method most common, but Prospective method can also be used
 - Method can be changed at any time, but FAP docs would need to be updated to reflect the change.



501(r) Refresher – Billing and Collections

▲ Extraordinary Collection Actions (ECAs)

- Selling Debt to another party
 - Ok so long as debt purchaser not to engage in ECAs, effectively acts as the Hospital is required to

▲ 120 day Notification Period & 240 day Application Period

- Both begin on the date the first “post-discharge” billing statement is provided.
- Must notify the individual about the FAP before initiating any ECAs to obtain payment for the care and refrain from ECAs for at least 120 days from the date of the first post-discharge billing statement.
- Must notify individual if incomplete FAP application submitted during the 240 day application period, and give them time to correct.
- Application period may be longer than 240 days because hospital must notify an individual at least 30 days before initiating one or more ECAs (in writing) to obtain payment for the care.



Polling question

A Hospital with a fiscal year end of 9/30 is currently working on their CHNA due by 9/30/21. By what date must the corresponding Implementation Strategy be completed?

1. 9/30/21
2. 2/15/22
3. 9/30/22
4. 12/31/21





In the News

Lown Institute Press Release (7/11/21)

- ▲ Lown Hospitals Index 2021 Community Benefit ranking examined 3,641 hospitals based on their Medicaid revenue, charity care spending, and other investments that have direct benefit to the community – like health clinics, housing, and food security.
- ▲ Data sources included 2018 hospital cost reports and Form 990s
- ▲ Public hospitals fared well, private non-profit hospitals not so much.
 - Institute calculated “fair share deficits” for private nonprofit hospitals
 - 72 percent were found to have a fair share deficit, ranging from a few thousand dollars to \$261 million
 - Hospitals that dedicated at least 5.9 percent of overall expenditures to charity care and meaningful community investment were considered to have spent their fair share.
 - 5.9 percent threshold is based on established research into the valuation of the nonprofit tax exemption.



In the News

The Center for American Progress (8/19/21)

- Interviewed representatives from three nonprofit health systems with robust and innovative community benefit programs. Some of the recommendations & best practices suggested below:
 - Accurately and efficiently assess community needs with community partnerships and input
 - Co-create community benefit programs with community members
 - Adjust the community health needs assessment cycle from three years to five years to allow nonprofit hospitals to align their inquiries with other community organizations and more efficiently use resources
 - Clarify tax exemption reporting requirements to explicitly support activities that address unmet social needs
 - Standardize IRS community benefit review and data collection to facilitate program evaluation and information sharing

Unrelated Business Income

“The 3 Legged Stool”



Must meet all 3 tests to be considered UBI

Trade or Business

- ▲ Implies a for-profit motive (does not mean the activity needs to be profitable).
- ▲ Ways to Avoid UBI
 - Charging “Cost” for an activity (removes for-profit motive)
 - Excessive Annual Losses
 - Could imply this isn’t a T or B, but if so, losses & NOLs could be disallowed by IRS



Regularly Carried On

▲ Very Fact Specific & Subjective

- Annual or infrequent (but what if there is significant planning & preparation)?
- Operating one day every week is considered regularly carried on
- Casual Sales are not considered regularly carried on (sales to general public at the University bookstore)
- Conducting a normally year round activity over a substantially shorter time span is not considered regularly carried on (NH Casinos)?

Not Substantially Related

- ▲ Activity must bear a “substantial causal relationship” to avoid UBI
- ▲ Simply using the funds from the activity for exempt purposes doesn’t cut it
- ▲ Community Benefit Exception
 - Hospital Gym
- ▲ Volunteer Exception





Common Hospital UBI Examples

- ▲ Debt-Financed Rental Income
 - Many exclusions, “85% Test” being the most common
- ▲ Non-Patient Pharmacy Revenue
- ▲ Non-Patient Laboratory Revenue
- ▲ Parking Facilities Open to the General Public
 - Patients and Visitors is OK and is not UBI

NOTE: Cafeteria & Gift Shop Revenues are not UBI
(Convenience Exception)

Gaming Activities

- ▲ What's in a Game?
 - Bingo
 - Pull Tabs
 - Raffles
 - Poker
 - Lotteries
- ▲ Gaming Activities should be reported separately on Form 990 & Sch G.
- ▲ Generally speaking, gaming activities are considered UBI, unless an exclusion applies!



Gaming Activities – Exceptions

▲ Exceptions to UBI Treatment of Gaming Activities:

- Not Regularly Carried On
 - Once or twice a year ok, every week not ok – very subjective
 - How much time is spent on organizing the activity?
- Volunteer Exception
 - If operated with substantially all (85%) volunteer labor
- Activity Operated like a Bingo Game
 - Bingo Game defined by IRS (yes, really) – played with cards with five rows of five squares, etc.
 - Wagers are placed, winners are determined, prizes awarded in the presence of all persons playing
 - Does not apply to other games of chance (like raffles)



Questions?

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